

**BEFORE THE MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the Matter of

Roberta L. Thogerson
3810 Bel Pre Road
Silver Spring, Maryland 20906

Complainant

v.

Grand Bel Manor Condominium, Inc.
Alec Lichtman, President
Board of Directors

Respondent

**Case No. 306-O
June 6, 1996**

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland for hearing, on March 27, 1996, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed hearing panel having considered the testimony and evidence of record, finds, determines, and orders as follows:

BACKGROUND

On May 23, 1995, Roberta L. Thogerson, owner of 3810 Bel Pre Road Silver Spring, Maryland 20906 (Complainant), filed a formal dispute with the Montgomery County Commission on Common Ownership Communities (Office or Commission). The Complainant alleges that the Board of Directors, Grand Bel Manor Condominium, Inc. (Board or Association) improperly amended Rule 17 of the Association's Rules and Regulations regarding trash removal, in violation of Section 11-111 of the Maryland Condominium Act; improperly discontinued the use of trash rooms within the condominium and impermissibly locked the trash rooms, preventing further use by the Owners; improperly placed dumpsters in the parking lots for trash collection, thereby eliminating parking spaces and altering the use of those parking spaces, in violation of Section 11-108 of the Maryland Condominium Act;

conducted closed meetings in violation of Section 11-109 of the Maryland Condominium Act; and took further improper action after her dispute had been filed with the Commission.

By correspondence dated July 12, 1995, the attorney for the Board, Mr. Steven Silverman (Counsel), advised the Commission that the position of the Association is that it has met its obligations pursuant to Maryland law.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission for action pursuant to Section 10B-11(e) of the Montgomery County Code, 1994, as amended, and, on December 6, 1995, the Commission voted that this was a matter within the Commission's jurisdiction. The hearing was held on March 27, 1996. The complainant represented herself, and the Respondent was represented by Mr. Steven Silverman. On agreement of the parties, the parties submitted additional argument. The record was closed April 11, 1996.

STATEMENT OF FACTS

The following facts were presented to the hearing panel in the form of oral testimony and documentary evidence introduced by the parties:

1. On December 27, 1994, Alec Lichtman, the president of the Board (President), sent a letter to the Unit Owners that he proposed to switch from use of trash rooms for trash disposal to enclosed dumpsters placed in the parking lots (Complainant's Exhibit A). The Board stated that the switch to dumpsters would lower costs to the condominium, and reduce the odor and vermin in the buildings. The Board requested written comments on the proposal before January 15, 1995.

2. On January 7, 1995, the Complainant wrote to the Board in response to its request for input, stating that she objected to the proposal because it would violate the Grand Bel Manor Plat, its Declarations, its By-laws, and its Rules and Regulations (Commission Exhibit at page 9).

3. On January 22, 1995, the Board wrote to the Complainant stating, essentially, that it was in compliance with the various applicable laws and regulations (Commission Exhibit at page 10). The proposed amendment, also dated January 22, 1995, stated, "Refuse and recyclable material from the Units shall be placed in dumpsters and recycling bins located near #3800, #3820, or #3852 in accordance with posted instructions" (Commission Exhibit at 11).

4. On January 28, 1995, the Board again wrote to the Unit Owners reiterating its proposal (Commission Exhibit at page 8). The Board noted that it had received three written responses, which constituted 1.5% of all Unit Owners. The letter stated that one response was

in favor of the dumpster, one letter was "very well written" but addressed "only" inconvenience, and one letter was a "red herring" stating that the Board would be in violation of the Declaration, the Plat, and the Bylaws. With regard to the latter letter, the Board stated that its attorney, management, and the Board had researched the matter and had found it "totally invalid." The letter concluded by noting that the Board had unanimously voted to amend Rule 17 of the Rules and Regulations and to implement the dumpster system.

5. On January 31, 1995, a notice was posted, stating that the trash rooms would be closed effective February 1, 1995, and that all refuse and recycling items must be placed in the dumpsters (Commission Exhibit at page 13).

6. On February 1, 1995, the trash rooms were closed and locked (Commission Exhibit at page 7).

7. On February 2, 1995, dumpsters were installed in the parking lot(s).

8. On February 20, 1995, the Complainant wrote to Counsel, to "resolve the issue of the appropriateness and legality" of the Board's actions (Commission Exhibit at page 14-16).

9. On February 28, 1995, the Board President wrote to Counsel discussing the issues raised by the Complainant (Complainant's Exhibit BB). The letter characterizes the Complainant's concerns as "self-serving."

10. On March 20, 1995, Counsel wrote to the Board stating that it appeared to him that the Board's Amendment of Rule 17 was not properly adopted and was, therefore, invalid (Commission Exhibit at page 26-9). Counsel noted that before the Board may adopt rules and regulations, Section 11-111(a)(1) of the Maryland Condominium Act requires that each Unit Owner be mailed or delivered a copy of the proposed rule, notice that Unit Owners are permitted to submit written comments on the proposed rule, and notice of the proposed effective date of the proposed rule. He noted further that Section 11-111(a)(2) of the Maryland Condominium Act requires that an open meeting be held to allow each Unit Owner or tenant to comment on the proposed rule prior to a vote being taken. Counsel recommended that Rule 17 be properly amended at the next regularly scheduled Board meeting with the proper 15 days notice to Owners and in accordance with other procedures noted above. With respect to the Complainant's remaining arguments, Counsel disagreed.

11. On March 27, 1995, the Board sent a letter to all Unit Owners noting the content of Counsel's letter of March 20, 1995, and apologizing for its error (Commission's Exhibit at page 30). The Board proposed to rectify the situation by voting on the change to Rule 17 at the next open meeting. The Board recited the content of Rule 17, stating essentially that refuse and recyclable material was to be placed in dumpsters. The effective date was set as February 1, 1995.

12. On May 3 or 4, 1995, the Board enclosed the dumpsters (Complainant's Exhibit C-E).

13. On May 22, 1995, the Complainant filed her dispute with the Office (Commission Exhibit at page 1-7).

14. On May 24, 1995, the Board met and unanimously approved the amendment of Rule 17 (Complainant's Exhibit at F-G).

15. On June 7, 1995, a petition with 56 signatures was submitted to the Board President (Complainant's Exhibit H-N). The petition requested a special meeting for the Unit Owners to vote on the Amendment to Rule 17.

16. On June 21, 1995, the Board acknowledged receipt of the petition and agreed to hold a meeting on July 6, 1995 (Complainant's Exhibit at O-R). The Board noted that a quorum would be required at the meeting.

17. On June 22, 1995, the Commission wrote to the Board President, noting that a formal complaint had been filed (Commission Exhibit at page 130). The letter advised that when a dispute is filed, an association must not take any action to enforce or implement the association's decisions. The Board President testified that he did not receive that letter.

18. On June 29, 1995, the Board President wrote to the Unit Owners to request that they overwhelmingly approve the Amendment to Rule 17 (Commission Exhibit at page 135). The letter also discussed the Complainant's "crusade."

19. At the July 6, 1995, meeting, 33% of the Unit Owners voted either in person or by proxy (Complainant's Exhibit S). Because there was no quorum, the amendment to Rule 17 was approved.

20. On July 7, 1995, the Board President posted a notice that there was no quorum and that the dumpsters would stay in place (Complainant's Exhibit T).

21. The Complainant's testimony reflects that she was cited for failure to dispose of her trash appropriately in the dumpsters.

22. The Complainant's witness had served on the Board as a president and as a member. He testified that the procedure for disposition of trash previously was that a contractor removed the trash from the trash room six days a week and removed bulk trash once a month; that exterminators took care of the insects, and that the floors and walls of the trash room were painted; and that the subject of dumpsters had come up many times, but that the Board had a problem with dumpsters, because open parking spaces were limited, the odors occurred even with dumpsters, and because of the placement of the dumpsters.

23. The Board President testified that residents did not follow posted regulations with respect to the trash rooms. Specifically, residents improperly bagged garbage; they threw garbage on the floor; the bulk trash in some buildings was placed in the trash rooms instead of out front; trash rooms got so full that the cleaning people could not get into the rooms; and they were cited by the Health Department. The President also stated that efforts to correct the problems included having the engineer's wife attempt to collect items for the recycle bins three times a week; posting a newsletter regarding trash disposal; and sending out special notices to those who could be identified as having improperly disposed of trash. The President testified, further, that he sought suggestions as to how to remedy the problems, but that the second option, hiring someone to clean only the trash rooms seven days a week, would have been prohibitively expensive. He concluded that the dumpsters would save \$12,000 per year in expenses.

24. The President also testified that the Board enclosed the dumpsters to improve their appearance; that it has not impacted the assigned parking spaces; that he could not recall any complaints about inadequate parking spaces; and that the roaches and smells are gone and the trash rooms are clean.

25. The Complainant testified that the trash rooms deteriorated because extermination of vermin was not adequately done, and that the extermination company was actually fired because it was not doing enough. She stated that the Board did not have this problem with the trash room previously.

26. The Complainant also alleges that voting done on September 19, October 2 and 20, November 21, and December 20, 1995, and on January 22 and 23 and February 8, 1996, was done in violation of Section 11-109(c)(6) of the Maryland Condominium Act.

27. In this regard, testimony reflects that the Board delegated authority to the President to take actions between Board meetings, which sometimes did not convene each month. Also, it had become the practice of the Board to make many decisions by telephone poll. Then, when there was a Board meeting, the Board would note the phone poll actions and insert them in the minutes without any substantive discussion or explanation to the Unit Owners present. Counsel has acknowledged that these procedures might be considered in conflict with the open meeting requirements and indicated that the Board would change its procedures if they were found to be incorrect by the Commission.

28. In pertinent part, the Maryland Condominium Act provides as follows:

Section 11-107(c): Any change [in percentage interest of the common elements] shall be evidenced by an amendment to the declaration.

Section 11-108(a): The common elements may be used only for the purposes for which they were intended and, except as provided in the declaration, the common elements

shall be subject to mutual rights of support, access, use, and enjoyment by all Unit Owners. However subject to the provisions of subsection (b) of this section, any portion of the common elements designated as limited common elements shall be used only by the Unit Owner of the Unit to which their use is limited in the declaration or condominium plat (Commission Exhibit at page 22).

Section 11-108(b): Any Unit Owner or any group of Unit Owners of Units to which the use of any limited common element is exclusively restricted may grant by deed the exclusive use, or the joint use in common with one or more of the grantors, of the limited common elements to any one or more Unit Owners.

Section 11-109(b): The bylaws may authorize or provide for the delegation of any power of the council of Unit Owners to a board of directors, officers, managing agent, or other person for the purpose of carrying out the responsibilities of the council of Unit Owners.

Section 11-109(c)(6): Except as provided in § 11-109.1 of this title, a meeting of the council of Unit Owners or board of directors shall be open and held at a time and location as provided in the notice or bylaws.

Section 11-109(d): The council of Unit Owners has, subject to any provision of this title, the declaration, and bylaws, the following powers:

- (12) To regulate the use, maintenance, repair, replacement, and modification of common elements;
- (13) To cause additional improvements to be made as a part of the general common elements.

Section 11-109.1(a): A meeting of the board of directors may be held in closed session only for the following purposes (Commission Exhibit at page 20):

- (1) Discussion of matters pertaining to employees and personnel;
- (2) Protection of the privacy or reputation of individuals in matters not related to the council of Unit owners' business;
- (3) Consultation with legal counsel;
- (4) Consultation . . . in connection with pending or potential litigation;
- (5) Investigative proceedings concerning possible or actual criminal misconduct;

- (6) Complying with a specific [legal] requirement protecting particular proceedings or matters from public disclosure;
- (7) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings.

Section 11-111(a): The council of unit owners or the body delegated in the bylaws of a condominium to carry out the responsibilities of the council of unit owners may adopt rules for the condominium if (Commission Exhibit at page 17):

- (1) Each unit owner is mailed or delivered a copy of the proposed rule; notice that unit owners are permitted to submit written comments on the proposed rule; and notice of the proposed effective date of the proposed rule;
- (2) Before a vote is taken on the proposed rule, an open meeting is held to allow each unit owner or tenant to comment on the proposed rule, which may not be held unless each unit owner receives written notice at least 15 days before the meeting; and a quorum of the council of unit owners or the body delegated in the bylaws of the condominium to carry out the responsibilities of the council of unit owners is present; and
- (3) After notice has been given to unit owners as provided in this subsection, the proposed rule is passed at a regular or special meeting by a majority vote of those present and voting of the council or body delegated.

Section 11-111(b): The vote on the proposed rule shall be final unless, (i) within 15 days after the vote to adopt the proposed rule, 15 percent of the council of unit owners sign and file a petition with the body that voted to adopt the proposed rule, calling for a special meeting; (ii) a quorum of the council of unit owners attends the meeting; and (iii) at the meeting, 50 percent of the unit owners present and voting disapprove the proposed rule, and the unit owners voting to disapprove the proposed rule are more than 33 percent of the total votes in the condominium (Commission Exhibit at page 18).

29. In pertinent part, the Declaration of Grand Bel Manor Condominium provides as follows:

Article 4(f): Parking. Section III contains surface automobile parking spaces for 309 automobiles. One parking space will be assigned per Unit. All remaining parking spaces will be available for the use of all Unit Owners on a first-come, first-serve basis (Commission Exhibit at page 52-3)

Article 8: Common Elements: (a) The General Common Elements consist of the entire property other than the Units and the Limited Common Elements, and include, without limitation, the following (Commission Exhibit at page 54):

(5) . . . all unassigned parking spaces . . .

Article 8: (b) The Limited Common Elements consist of all . . . trash rooms. Each . . . trash room is reserved for the exclusive use of the Unit Owners whose Units are contained in the Building in which such . . . trash room . . . is contained (Commission Exhibit at page 55).

30. In pertinent part, the Bylaws of the Grand Bel Manor Condominium provide as follows:

Article II: Council of Unit Owners.

Section 1. Composition. Except as to those matters which the Condominium Act specifically requires to be performed by the vote of the Unit Owners, the affairs of the condominium shall be managed, and the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth in Article III (Commission Exhibit at page 81).

Article III: Board of Directors.

Section 2. Powers and Duties. The Board of Directors shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Condominium Act or the Declaration, or these Bylaws. The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent, if any, which might arise between meetings of the Board of Directors (Commission Exhibit at page 85).

Article V: Operation of the Property.

Section 10. Rules and Regulations. Rules and Regulations concerning the operation and use of the Common Elements may be promulgated and amended by the Board of Directors, provided that such Rules and Regulations are not contrary to or inconsistent with the Condominium Act, the Declaration, or these Bylaws (Commission Exhibit at page 103).

Section 12. Parking Spaces. One parking space per Unit shall be assigned in accordance with the provisions of the Declaration. All remaining parking

spaces shall be used by the Unit Owners for self-service parking purposes on a first-come, first-serve basis (Commission Exhibit at page 104).

Article XIII: Amendments to Bylaws.

Section 1. Amendments. Except as otherwise provided in this Section, these Bylaws may be modified or amended either (i) by a vote by 75% of the Unit Owners, present in person or by proxy, at any regular or special meeting of the Council of Unit Owners, or (ii) pursuant to a written instrument duly executed by 75% of the Unit Owners (Commission Exhibit at page 121).

Section 2. Recording. A modification or amendment of these Bylaws shall become effective only if such modification or amendment is recorded in the Office of the Clerk of the Circuit Court in and for Montgomery County, Maryland (Commission Exhibit at page 121-2).

Section 3. Conflicts. No modification or amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Condominium Act (Commission Exhibit at page 122).

31. In pertinent part, the Rules and Regulations of the Grand Bel Manor Condominium provide as follows:

Rule 17 (before attempted amendment): Refuse from the Units shall be placed in the trash rooms of the Buildings (Commission Exhibit at page 127).

32. Chapter 10B-9(e) of the Montgomery County Code 1994, as amended, states:

When a dispute is filed with the Commission, a community association must not take any action to enforce or implement the association's decisions, except filing a civil action under subsection (f) until the process under this Article is completed.

33. In *Alpert v. Le'Lisa Condominium*, 107 Md.App. 239 (1995), the Maryland Court of Special Appeals addressed the issue of whether assignment of parking spaces at a condominium was a regulation of use of a common element, rather than a taking of a portion of each Unit Owner's percentage interest in common areas. The Court stated that the parking restriction was related to promoting the health, happiness, and peace of mind of all of the Unit Owners. The Court found the temporary use of a particular space by each Unit Owner more akin to a use restriction than a taking, that is, a permanent grant of exclusive use of a part of the common elements. The Court concluded that the appropriate standard of review for evaluating a condominium bylaw amendment containing a use restriction is reasonableness.

FINDINGS AND CONCLUSIONS

Based upon a preponderance of the testimony and documents admitted into evidence, after a full and fair consideration of the evidence of record, including the legal arguments made by the parties, the Commission makes the following findings of fact and conclusions of law:

Placement of Dumpsters in Parking Lot:

1. The parking spaces at the condominium are defined by the Declaration of Grand Bel Manor Condominium as a common element.

2. The Maryland Condominium Act provides that the common elements may be used only for the purposes for which they were intended and shall be subject to mutual rights of support, access, use, and enjoyment by all Unit Owners. The Act also provides that the council of Unit Owners has the power to regulate the use, maintenance, repair, replacement, and modification of the common elements.

3. The Board took unassigned parking spaces and placed dumpsters in those spaces, for the express purpose of reducing the cost and health-related problems of disposing of trash in the trash rooms.

4. In so doing, the Board changed the use of a small part of the parking lot from parking to trash disposal, such that these parking spaces are not being used for the purposes for which they were intended. However, the dumpsters continue to be subject to the mutual rights of support, access, use, and enjoyment by all Unit Owners. Moreover, the Unit Owners continue to have one space assigned to each Unit, as well as the use of the remainder of the unassigned parking spots for parking on a first-come, first-serve basis.

5. The conversion of several of the parking spaces from one type of common element to another did not grant exclusive use of the common elements to any one Unit Owner or group of Unit Owners, and all Unit Owners continue to benefit. Therefore, the Commission finds this partial use conversion more akin to a use restriction or modification of a common element than to a taking.

6. Although there is conflicting testimony as to whether there would have been health problems in the trash rooms had the current Board managed the trash rooms as past Boards had, this use restriction on the parking spaces meets the "reasonableness" standard of review for evaluating a condominium rule amendment containing a use restriction. The substance of the rule will therefore stand.

Closing of the Trash Rooms:

1. The trash rooms at the condominium are defined by the Declaration of Grand Bel Manor Condominium as limited common elements.

2. Any change in percentage interest in such elements must be evidenced by an amendment to the declaration. Such amendment must be approved unanimously. *Alpert, supra.*

3. The Maryland Condominium Act and the condominium documents do not mandate use of the trash rooms as trash rooms. However, the trash rooms are locked to the residents of each building for whom use is exclusively reserved. The decision to lock the trash rooms was not unanimously approved.

4. Therefore, the decision by the Board to close and lock the rooms amounts to a prohibited taking of a limited common element.

5. Although we conclude that the Board does not have the power to close and lock the rooms, because such action would wrongly deprive the unit owners of the use of a limited common element, we cannot go further, as urged by our dissenting panel member Mr. Auvil, to conclude that the Board must allow the rooms to be used as trash rooms. Regulation of the uses of common elements and limited common elements is within the Board's authority. Therefore, while the Board may not deprive the unit owners of all use of the rooms, the Board may determine what the rooms may be used for, and otherwise limit and regulate their use. This is a fact of condominium life, as the court noted in *Alpert*:

"Inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization." *Alpert, supra*, citing to *Hidden Harbour Estates, Inc. v. Norman*, 309 So.2d 180 (Fla. Dist. Ct. App. 1975).

Amendment of Rule 17:

1. The Board, without following procedures dictated by the Maryland Condominium Act, purported to amend Rule 17.

2. Upon advice from Counsel, the Board attempted to rectify its error by providing proper notice under the Act, describing the proposed rule, allowing comment on the proposed rule, and setting the effective date. The Board then unanimously approved the amendment of

Rule 17.

3. The procedures for amending Rule 17 were flawed. Initially, the Board failed to follow the procedures set forth in the Condominium Act. Later, in attempting to rectify its error, the effective date of the proposed rule was set as February 1, 1995, that is, retroactively. A "proposed" effective date, by its very definition, should be at some point in the future.

4. Further, when soliciting Counsel's opinion about the amendment to Rule 17, when soliciting Unit Owners to unanimously approve the amendment to Rule 17, and at other points during the pendency of this dispute, the Board President has characterized the Complainant and her actions in unflattering terminology. These actions were inappropriate, in that a Board President represents the interests of all of the Owners, not just those who happen to agree with him or her on an issue.

5. Notwithstanding the improper procedures followed by the Board, the Commission is not prepared to find that the amendment to Rule 17 is void *ab initio*, because the Commission has found that the substance of the amendment is within the power of the Board. In this respect, it would be an exercise in inefficiency, and would raise form over substance, to require the Board to completely redo the amendment process, if only to arrive at the same result.

Board Meetings:

1. The Board's procedure of frequently acting by phone poll and later noting actions at a meeting does not conform to the requirements of the Condominium Act for open meetings. The procedure used by the Board does not allow Owner presence when original decisions are made, and then it does not provide adequate information to Unit Owners present when the decision is later reported at Board meetings. In summary, Unit Owners in the condominium are not receiving the benefit of the open meeting requirements of the Condominium Act.

2. In addition, the delegation of authority to an individual Board member under the Condominium Bylaws is restricted to matters relating to duties of the managing agent. The Bylaws are in no sense an authority for delegating decisions which the Board would otherwise be required to make, even if such were permitted by the Condominium Act, which is not the case.

3. The Commission recognizes that there are situations such as danger to life and property which require prompt actions by managements and boards. However, the actions taken by the Board by telephone should be rare rather than regular, should be justified by the special situations involved, and should be reported on adequately and promptly at an announced Board meeting.

Actions taken by the Board After Instant Complaint Filed:

1. The Complainant alleges that the Board continued to take action on its decision to change trash disposal from trash rooms to dumpsters after she filed a complaint with the Commission.

2. The Board President testified that he did not receive the Commission correspondence advising him that he was prohibited from taking further action to implement the Board's decision.

3. There is not enough evidence of record to find that the Board President knew that the Complainant filed a dispute with the Commission, that he knew of the requirement that he not take further action with respect to implementation of the trash disposal system, and that he proceeded to take action despite such knowledge.

ORDER

In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. Within thirty (30) days from the date of this Order, the Board shall unlock the trash rooms in each building, and supply the Unit Owners in each building with the key to the trash rooms for that building.

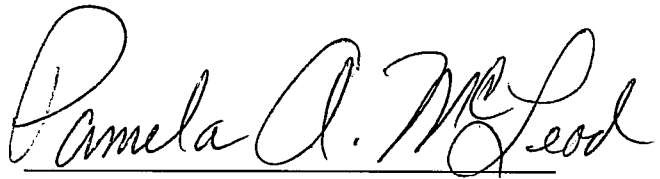
2. Within thirty (30) days from the date of this Order, the Board shall rescind any fines or violations sustained by the Complainant or others between the dates of February 1 and July 7 for failure to comply with the amended Rule 17.

3. With respect to the open meeting requirements, any telephone polls shall be in the format of a conference phone call to ensure that all Board members are aware of the opinions of all others before decisions are made. Special meetings of the Board may be announced and held either to announce a phone decision or to enable open discussion and prompt action by the Board without resorting to phone calls.

4. The reports of action taken between meetings by phone or otherwise shall be reported at Board meetings in such fashion as to enable attending Unit Owners to know what was considered and what was decided. Insofar as feasible, documents considered in the decision made by telephone shall be read or made available to attendees. Otherwise, the purpose of open meeting requirements is defeated.

The foregoing was concurred in by panel members McLeod and Chester. Panel member Auvil dissents.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Pamela A. McLeod
Panel Chair, Commission on Common
Ownership Communities

Dissent by Panel Member Carl E. Auvil

I am unable to agree with parts of the panel majority's decision, because I believe that the Condominium Act and the Condominium documents prevent the Board from discontinuing the use of individual trash rooms in each building and requiring use of an outside trash disposal system.

The Declaration states in section 4(b) that "Each building in each section contains . . . a trash room" and in Section 8(b) that "Each . . . trash room . . . is reserved for the exclusive use of the Unit Owners whose Units are contained in the building in which such . . . trash room . . . is contained." This reference alone results in a reasonable expectation that a trash room would be available in each building for use as a trash room.

Further, Section 13 of the Bylaws, "Use of Common Elements and Facilities," forbids Unit Owners from placing items such as packages, garbage, rubbish and the like in common areas "other than the areas in each building designated as storage or trash rooms." This underlines the expectation that the trash rooms are to be used as such.

It is my reading that the foregoing references to the trash room lead to the logical expectation of prospective and current Unit Owners that there will be trash rooms in each building used for the temporary storage and disposal of trash. The panel decision would simply require that the trash rooms be unlocked, for unspecified use or purpose, but that the amendment to Rule 17 requiring that all trash be taken to dumpsters on the parking lot would be allowed to stand. Permitting the association to require owners to take all trash outside to the dumpsters constitutes the loss of an amenity which owners and other residents had every reason to expect would be available to them.

Any such ruling that would allow Condominium Boards to take away an amenity which the documents gave owners every reason to expect to be available would open a Pandora's box. It would open the door for Boards in many situations to remove amenities which were a part of the contract with owners when they purchased their units. It would make prospective

and current owners in all condominiums in Montgomery County uncertain as to whether they would continue to receive the amenities promised when they purchased their units. It would constitute permission to Boards to take away property rights of owners and to violate presumed contracts. The decision by the Board to close and lock the rooms also amounts to a prohibited taking of a limited common element.

Accordingly, in my opinion, the ruling should have been (1) to revoke the amendment to Rule 17 requiring that all trash be taken to dumpsters and (2) require the Association to permit owners and residents to return to full use of the trash rooms. Management could then arrange to remove the contents from individual building trash rooms periodically and transfer them to the dumpsters or directly to contract haulers. Dumpsters could be used directly by owners at their own discretion. Use of both the rooms and the dumpsters would avoid the problem of overflow and blocking of trash rooms, which was given as one of the reasons for the Board's action.